Manfred Lachs

The Polish-German Frontier

PWN ★ Polish Scientific
Publishers ★ Warszawa 1964

Manfred Lachs

THE POLISH-GERMAN FRONTIER

Law, life and logic of history

PWN — POLISH SCIENTIFIC PUBLISHERS
WARSZAWA
1964

Jacket designed by L. Urbański

Copyright 1964
by
Państwowe Wydawnictwo Naukowe
(PWN—Polish Scientific Publishers)
Warszawa

Printed in Poland
(DRP)

CONTENTS

INTRODUCTION / 7

POPULATION TRANSFER / 11

THE POTSDAM AGREEMENT / 19

THE ROAD TO POTSDAM / 25

AFTER POTSDAM / 33

WHENCE THE QUESTION MARKS / 41

LAW AND POLITICS / 59

THE CASE FINAL RECOGNITION / 65

CONCLUSIONS / 69

BIBLIOGRAPHY / 75

INTRODUCTION

EUROPE, this old continent of ours, has behind it a long history of frontier-making. Its area is marked by the greatest number of boundaries: twice more than in South America, three times as many as those of North America. And how varied in size and character they are, from the smallest, not exceeding 50 km, to those over 1000 km.

Europe's history has been rich in frontier problems. The latest changes on the map of Europe were made after 1945, in the wake of the most devastating of wars.

Among these new frontiers is Poland's western boundary. The posts marking it constitute a part of Europe's political reality of to-day. Within the area delimited by them Poland has exercised her authority and power for the last eighteen years.

To-day this area is completely integrated with the other parts of the country: it contributes 28% of the total industrial production of Poland, and 25% of the employment; out of 13,423,000 tons of the main agricultural products, 4,112,000 tons come from this part; out of 9,589,500 head of cattle, 2,771,000 are bred there; 16,352,000 tons of goods are loaded in the harbours of Gdańsk and Szczecin[1].

The State allots more than 24% of its investments in socialized economy to this area.

But above all, out of a population of 30,483,600, 7,810,000 Poles live on these territories, 55% in towns

[1] All figures are based on the 1962 census.

and settlements, the remainder constituting the rural population: 2,241,800 are employed in socialized branches of economy, 835,400 in industry, 213,300 in agriculture and forestry and 140,300 in education, science and culture; they register the highest annual increase of population[2]. Schools of all types are growing in numbers: 74,500 pupils attend secondary schools and 318,100 professional and art schools: 21 universities and other establishments of higher education are attended by 56,032 students.

Life moves onward, the ruins of war have almost disappeared, new towns and villages have been built, new factories and big industrial combines are in full development; power production has almost doubled, pig-iron has risen to 178·1%, and steel to 264·2% as compared with the peak years of the past.

Culture and science, universities and research centres have given a new character to the whole area. Szczecin and Wrocław, as well as Gdańsk and Olsztyn, are to-day completely Polish cities, as is the rural and industrial area surrounding them. The growth and development of the area is exemplified by the steel-works in Małapanew, the rolling mills in Bobrek, the electric power plants in Miechowice, Czechnica and Dychów, the cement plant in Odra, the sulphuric acid works in Wizów, the factories in Racibórz and Kuźnia Raciborska, the big shipyards in Szczecin and Gdańsk, the new coal-mines in Rokitnica, the Pafawag machine works in Wrocław, the synthetic fibre plants in Gorzów, Szczecin and Jelenia Góra, the paper mills in Skolwina and Kostrzyń, and, at Turoszów, the gigantic electric power-plant, of 2000 megawatts.

[2] 1962: average for the whole country 11·7 per thousand, in the western territories 15·8 per thousand.

Life is going on, through hard work and ceaseless efforts and hardship, too; this new generation of Poles is building a future with growing opportunities for posterity.

All this is happening inside the Oder–Neisse frontier. There would normally be nothing particular about this, no need for politicians and lawyers to raise an issue about it, since this is the natural process of development of a hard-working nation which, like a phoenix, has risen from the ashes of war. Yet, there are still some who question the ultimate and definitive character of this boundary. Claims are advanced to areas within it and a curious offensive of maps, propaganda and political speech-making, of official and semi-official declarations, is being conducted.

Can it truly be claimed that the reality in Western Poland is only provisional, that the frontier calls for further negotiation, that changes or revisions are possible? Has the population of almost eight million Poles living here a temporary status only? These questions, sometimes raised, require clarification. They must be given a categorical answer.

POPULATION TRANSFER

The area included within Poland's new western frontier was formerly inhabited by 7,200,000 Germans and about 1,500,000 Poles. The future of the German population had already become the subject of inter-Allied conferences in the early stages of World War II. On various occasions the leaders, as well as other statesmen and representatives of political parties of the Powers, particularly those of the U.S.S.R., United States[3] and the United Kingdom[4], gave assurances in this connection.

[3] As early as 1943 President Roosevelt reffered to the future of the Germans in East Prussia during talks with Mr. Anthony Eden (as he then was), the Foreign Secretary of the United Kingdom: "The President said he thought we should make some arrangements to move the Prussians out of East Prussia, the same way the Greeks were moved out of Turkey after the last war; while this is a harsh procedure, it is the only way to maintain peace, and that, in any circumstances, the Prussians cannot be trusted." R. E. Sherwood: *Roosevelt and Hopkins*, New York 1948, p. 710. From a letter of President Roosevelt: "If the Polish Government and people desire in connection with the new frontiers of the Polish State to bring about the transfer to and from the territory of Poland of national minorities, the United States Government will raise no objection and as far as practicable will facilitate such transfer." *Poland, Germany and European Peace, Official Documents, 1944–1948*, London 1949, p. 108.

[4] In January 1944, in the course of discussing Poland's future, Winston Churchill suggested a five point solution concerning Poland. Under point four: "... all Germans to be removed from the new Poland"; see Cordell Hull: *The Memoirs*, London 1948, vol. II, p. 1438; "In particular all Germans left outside the post-war frontiers,

These assurances, made at various conferences and in a number of statements, were to take legal form.

The most important document in which they were embodied was the Communique of the Meeting of the three Heads of Governments at Potsdam[5]. To this,

should go back to Germany ... there will be a unique opportunity, which will not recur, to make a permanent settlement of this vexed question": from the Report of the National Executive Committee of the British Labour Party to the annual Conference held 29 May–2 June 1944. From a speech of Winston Churchill, then Prime Minister of the U. K., delivered in the House of Commons: "The transference of several millions of people would have to be effected from the East to the West or North, as well as the expulsion of the Germans —because that is what is proposed: the total expulsion of the Germans—from the area to be acquired by Poland in the West and the North. For expulsion is the method which so far as we have been able to see, will be the most satisfactory, and lasting. There will be no mixture of populations to cause endless trouble, as has been the case in Alsace–Lorraine ... I am not alarmed by the prospect of disentanglement of populations, nor even by these large transferences, which are more possible in modern conditions than they ever were before. The disentanglement of populations which took place between Greece and Turkey after the last war was in many ways a success... Nor do I see why there should not be room in Germany for the German populations of East Prussia and of other territories I have mentioned. After all, 6,000,000 or 7,000,000 Germans have been killed already in this frightful war, into which they did not hesitate, for a second time in a generation, to plunge all Europe ..." *Parliamentary Debates, House of Commons, Official Report*, vol. 406, No. 1, col. 1484. From a letter of Mr. Anthony Eden to Mr. Winston Churchill: "The cessions upon which we and the Americans are agreed would involve the transfer of some 2 1/2 million Germans. The Oder frontier without Breslau and Stettin would involve a further 2 1/4 million. The Western Neisse frontier with Breslau and Stettin would involve an additional 3 1/4 million, making 8 millions in all". January 1, 1945; *Foreign Relations of the United States, Diplomatic Papers, the Conference at Malta and Yalta*, Washington 1955, p. 509 (the figures indicated were exaggerated, as will be shown later in the text).

[5] "The three Governments, having considered the question in

France—not a participant of the Potsdam meeting—expressed her consent[6].

This decision became the basis of a series of further specific arrangements for its practical implementation. It is worth recalling that at Potsdam the number of those to be transferred was not mentioned. A plan providing for the details of the evacuation was to be drawn up by the Allied Control Council for Germany: Germans from Poland were to be transferred to the British and Soviet zones of occupation in Germany[7]. In further implementation of this decision the Polish Government concluded corresponding agreements with the representatives of

all its aspects, recognize that the transfer to Germany of German populations or elements thereof remaining in Poland, Czechoslovakia and Hungary, will have to be undertaken. They agree that any transfers that take place should be effected in an orderly and human manner." Chapter XIII of the Potsdam Communiqué, *United Nations Documents*, 1941–1945, p. 205.

[6] "En réponse à votre communication du 1er Août concernant les transferts en Allemagne de populations minoritaires allemandes se trouvant en Pologne, en Tchécoslovaquie et en Hongrie, j'ai l'honneur de vous faire connaitre que le Gouvernment français a pris acte de l'arrangement intervenu à ce sujet entre les Gouvernements américains, britannique et soviétique.. Le Gouvernement français n'élève pas d'objections contre le principe de ces transferts . . .". Note of the French Government of August 7, 1945.

[7] "At their 12th meeting held in Berlin on November 20, 1945, the Allied Control Council for Germany approved a plan for the transfer of the German population to be moved from Czechoslovakia, Austria, Hungary and Poland into the four occupied zones of Germany. Details of this plan outlining their tentative preliminary allocation between the zones of Germany and the movement schedule of the German population to be transferred from Austria, Czechoslovakia, Hungary and Poland into the four occupied zones of Germany are as follows: The entire German population to be moved from Poland (3 1/2 million persons) will be admitted to the Soviet and the British zones of occupation in Germany." Text of message

the respective zones of occupation[8]. It was anticipated that 3,500,000 Germans would be subject to transfer, taking into account the massive evacuation carried out by the German authorities in the course of the military operations and the flight of a considerable number of people as the German Eastern Front crumbled and the army withdrew westwards. But even this figure, constituting as it did less than half the pre-war population of that area, still turned out to be exaggerated, the more so as, among the inhabitants, there was a far from negligible percentage of Poles who, while subjected to forced assimilation and Germanization, had retained their national identity. Implementing the above mentioned agreements, the Polish authorities proceeded with the transfers which lasted throughout the year 1946 until May 1947[9]. By that time only a small number of Germans remained in the area[10]. It is therefore fair to say that the problem was virtually solved.

While the Germans were leaving, Polish settlers were arriving: peasants, artisans, workers, doctors and all those who were to make up the new population in village and town. Theirs was the most difficult task: to build a new life on the ruins and ashes left by the war. They did not come there as strangers. Students of European history

from the Allied Control Council in Berlin. "Zbiór Dokumentów" (Document Series), Warsaw 1946, No. 12, p. 426.

[8] The agreement with the British zone (February 14, 1946) arranged the technical aspects of the transfer of 1,500,000 Germans, that with the Soviet zone provided for the transfer of 2,000,000 Germans.

[9] According to a population census taken early in 1946 the population of those territories amounted to 5,022,000, of which only 2,075,957 were Germans.

[10] Those who still remained, left in the course of the following years.

know of the links of this area with Poland. From its earliest days, Silesia, situated in the heart of Europe, constituted a part of Poland. Ruled by Polish Kings and Princes, she fell a victim of dynastic quarrels and consequently of foreign rule. Brought under the Habsburgs, as Kings of Bohemia, and swallowed by Frederick II, her population never ceased to fight for its Polish identity. The struggle for her restoration to Poland, marked by the Silesian uprisings and political action, continued. In spite of zealous and thorough methods of Germanization, the bonds of kinship with the homeland remained. When Europe's pre-war frontiers were drawn at the end of World War I, only the eastern part of Upper Silesia was returned to Poland.

Gdańsk's links with Poland date back to its earliest days, as a coastal settlement inhabited by Slavic fishermen, long before it fell prey to the ruthless Teutonic Knights. After a period it came back under Polish rule for almost 350 years. It became the "Admiral of Poland" and to quote a well-known Polish historian "the banner of Danzig, two white crosses covered by the Polish crown, on a red background, waved from this time on the Baltic, and right away to the Western and Southern seas. In a trice the number of vessels calling at the port was doubled and trebled". With the partition of Poland it fell into the hands of Prussia and as a German writer recorded: "everything was done to make this city one of the unhappiest in the world". The fate decreed to it by the settlement after World War I is well known. Polish, was also the past of the whole territory between the Vistula and Oder having been covered with Slavonic settlements. The river Oder was the natural frontier of Poland which "like a wall surrounded that State"—as Frederick Barbarossa saw it. This is the land to which

reference can be found in that famous medieval document, known as the Magdeburg Manifesto: "These pagan tribes—it read—are very bad, but their soil is very good . . ." Hence the claim to the soil, an incitement to conquest. It was one of those areas to which the octopus of German colonization extended its tentacles, "one far along the Baltic, another up the Oder, a third down the Danube, dominating, permeating, encircling non-German territories"[11].

But let us not digress too much into history. It suffices to say, that from behind the many facades and structures bearing evidence of attempts to Germanize this land, there emerge true monuments of Poland's culture and art. With every year passing by, more evidence is revealed of the Polish history of that area. The settlers who arrived there in 1945 and later have thus been able to establish close ties with the Polish past.

With the years they have built a new life and society, with all that goes with it: political, economic, cultural and scientific development. By now, a new generation about eighteen years old, born and educated on these lands, is about to enter active life. Can one possibly suggest that their own, and their parents, stay there was meant to be provisional?

Population movements are difficult and painful operations. They are so both for those who leave and those who arrive. Sometimes these changes are spontaneous and organized. Such was the situation in the Balkans between the years 1912–1924 when no less than 17 population movements in different directions were recorded. In view of the hardship involved there are but

[11] L. B. Namier: *Conflicts*, London 1942, p. 6–7; cf. also J. Winiewicz: *The Polish–German Frontier*, London 1945.

few cases in history where the device of transfer was resorted to. However, there are situations in which this seems the best possible or even the only solution for the present and the future in the interest of all concerned.

The case in question is one of them. It seemed inevitable, and having been done, can it be undone? Can one undo a process and action based on legally binding agreements, freely entered into and carried out in accordance with their clear meaning and obvious intention? Those millions of men and women who settled there and those who were born there, were and are citizens of Poland, living in an area which they have the unquestionable right to consider as an integral part of their homeland.

How else could one explain or justify their journey, their work and their ceaseless efforts to build a new life?

Legal, logical and practical considerations offer an unequivocal reply to any question tending to qualify the solution as a provisional one. Apart from this, the rights of men are deeply rooted in the right to the land.

THE POTSDAM AGREEMENT

There hardly exists another international instrument which has been subjected to more detailed scrutiny, to more conflicting interpretations than the Declaration signed at Potsdam, on August 2, 1945, particularly that part of it which deals with the issue of Poland's western boundary. Books and articles on the subject go into hundreds, and the literature is constantly growing.

Now, almost nineteen years later, it may be worthwhile to look at it again, not in order to add one more interpretation to those already existing[12], but to view the problem from a certain perspective. It is only logical to begin with a reading and re-reading of the respective passages.

The area concerned has been clearly defined[13],

[12] See the noteworthy studies by A. Klafkowski: *The Legal Foundations of the Oder–Neisse Frontier*, Poznań 1947 (in Polish); *The Potsdam Agreement*, Warsaw 1963. Also: A. Bramson: *Some Legal Problems Connected with the Oder–Neisse Frontier*, Collection in honour of J. Makowski, Warsaw 1957 (in Polish): B. Wiewióra: *The Polish–German Frontier from the Standpoint of International Law*, Poznań–Warsaw 1959. The present writer shares many of the views advanced by them. Cf. also other works quoted by Wiewióra in: *West German Territorial Claims against Poland and International Law*, "Przegląd Zachodni" (Polish Western Affairs), vol. II, No. 1, 1961 (in English).

[13] "... east of a line running from the Baltic Sea immediately west of Swinemunde, and thence along the Oder River to the confluence of the Western Neisse River and along the Western Neisse to the Czechoslovak border, including that portion of East Prussia not placed under the administration of the Union of Soviet Socialist

unequivocally qualified[14], the objective stated[15], and some additional action reserved for the future[16].

Most of the controversy centred around the provision: "shall be under the administration of the Polish State". The word "administration" should not, of course, be analyzed in isolation. *Ex antecedentibus et consequentibus fit optima interpretatio.* It was made clear that "administration" was not meant to correspond with the term "occupation", which had a specific connotation.

Germany was divided into four zones of occupation, the purpose of which is well known, and at no time was the area alloted to Poland considered as the "fifth zone". Republics in accordance with the understanding reached at this conference and including the area of the former Free City of Danzig..." (Chapter IX B). The language and definitions are perfectly clear, there can be no mistake about it. These happened in the past. For instance the agreement concerning the former Belgian Congo and North Rhodesia, concluded in 1894 stipulated: "The Thalweg of the Luapala up to its issue from Lake Bangweolo. Thence it shall run southwards along the meridian of longitude of the point where the river leaves the Lake." Boggs points out, that: "The Luapala River does not flow from the Lake Bangweolo at all. It is identical with the Chambezi River which rises in the neighbourhood of Abercorn and takes the name Luapala after flowing through the swamps to the South of Lake Bangweolo". See Boggs: *International Boundaries,* New York 1940, p. 167. Mistakes were recorded also in treaties concerning boundaries in Europe. But in the case of the Polish frontier there can be no question of any misunderstanding.

[14] "The former German territories".

[15] "Accession of territory in the North and West which Poland should receive". The area in question... "shall be under the administration of the Polish State and for such purposes should not be considered as part of the Soviet zone of occupation in Germany."

[16] "The Three Heads of Governments reaffirm their opinion that the final delimitation of the western frontier of Poland should await the peace settlement."

"Administration" therefore, as opposed to "occupation", implied the permanent character of the authority concerned, thus becoming an equivalent of the word "sovereignty". And it cannot be denied that it has been frequently used in the past to convey this meaning[17].

This interpretation is reinforced by another important provision of the Potsdam agreement. The area involved was described as "the former German territories", and "the former free city of Danzig". The word "former" makes it clear that all legal links between Germany and that territory and her title to it were finally and irrevocably cut. Thus in dealing with it and determining its future the parties to the instrument treated it as an area which ceased to be part of Germany.

"Nothing is better settled, as a canon of interpretation in all systems of law, than that a clause must be so interpreted as to give it a meaning rather than so as to deprive it of meaning"—let us follow this reasoning so clearly phrased in the well-known Cayuga Indians' Claims Case. By refusing to attach decisive importance to the words "the former German territories", "we are not asked to choose between possible meanings. We are asked to reject the apparent meaning and to hold that the provision has

[17] The term "administration" has been used in several international instruments, not always reflecting the same meaning: cf. the administration of Cyprus by Great Britain (1878–1914); of Bośnia and Herzegovina by Austria and Hungary (1878–1908); the Charter of the United Nations refers to the "administration and supervision" of territories placed under the trusteeship system (art. 75) but bearing in mind its "basic objectives" (art. 76) no one else but the people of each trust territory can be considered as the real sovereign. Cf. the legal structure of the Mandates under the League of Nations (art. 22 of the Covenant). However, these are cases of a specific character, while it is commonly accepted, that "administration" means the conduct of exercise of "the governmental duties of a state".

no meaning. This we cannot do"[18]. Hence no interpretation could alter the consequences of the words thus employed. One could hardly suggest that they were used inadvertently and therefore they were bound to have a decisive impact on the provision as a whole. The area ceased to be part of Germany. Has it become no-man's land? Could any other state lay a claim to it (Germany of course excluded), while millions of Poles were about to be settled there? Should Poland's control over the area be considered as provisional only?

There is little doubt that both questions ought to be answered in the negative. It is not only logic, but again there is the text of the agreement, which makes the position clear. It is to be derived from the meaning of the term "Poland", in the territorial sense, as of the date the Potsdam agreement entered into force. In the Chapter (XII) dealing with transfers of population it is stated that: "the three Governments, having considered the question in all its aspects, recognize that the transfer to Germany of German populations, or elements thereof remaining in Poland.... will have to be undertaken". This meant as confirmed by subsequent facts that these Germans ought to leave not only the pre-war territory of Poland, but also the area within the Oder–Neisse frontier. It was made clear that the area had become Polish (for they had to be transferred from "Poland") and that it had ceased to be part of Germany (for they had to be transferred to "Germany"). The notion "Poland" was thus clearly defined and the decision implemented accordingly.[19]

[18] American and British Claims Arbitration, Awards 1–84, Washington D.C. 1924, Claim No. 6.

[19] See the comments of A. Klafkowski's: *The Potsdam Agreement*, p. 258–260; his general analysis of the Potsdam Agreement

This reading of the text is further confirmed by linking the "administration" of these territories with references to some further action to be taken in the future ("the final delimitation of the Western frontier of Poland . . .").

Had the intention of the Parties concerned been different, the language used would have been different. "The disposal" of the territory in question would have been reserved for further action. This was not done. It was obviously meant that it was disposed of by:

(a) severing the links with the previous sovereign,

(b) establishing a link with the new sovereign—in the very same document.

Having disposed of it—the only thing left was to carry out the delimitation of the frontier. Nothing "provisional" can possibly be read into the text in question[20].

in his earlier works, particularly: *The legal Foundations of the Oder–Neisse Frontier;* also B. Wiewióra: *The Polish German Frontier from the Standpoint of International Law,* p. 86–93.

[20] An interesting illustration of a conditional arrangement is to be found in the treaty concluded on July 15, 1924 by which Great Britain transferred to Italy an area east of the river Juba, on the old frontier between Kenya and the Italian Somali. The relevant provision reads as follows: "In the event, however, of it being found . . . that the well of El Beru does not contain water either sufficient or suitable for the maintenance at that point of an Italian frontier post, then the line, as between El Beru and Eilla Kalla, shall be so drawn by the Commission as to include in Italian territory the neighbouring well of El Shama". Cmd. 2194, p. 3.

Another illustration of a temporary and conditional frontier settlement is art. III of the treaty of Aucan concluded between Chile and Peru, October 20, 1883: "The territory of the provinces of Tacna and Arica, bounded on the north by the river Sama from its source in the Cordilleras on the frontier of Bolivia to its mouth at the sea, on the south by the ravine and river Camarones, on the

It is therefore clear that the only country upon which the legal title of sovereignty over the area was conferred, was Poland and so it obviously has remained.

The heading to the chapter dealing with the problem in question reads: "The following agreement was reached on the western frontier of Poland".

The consensus reached in Potsdam was therefore for all intents and purposes an agreement and it aimed at fixing Poland's boundary with Germany. In whatever way one may read the text, this remains the only possible conclusion, as it is "most in conformity with the purpose of maintaining the full efficacy of the provision itself and as related to the remaining articles of the treaty"[21].

But should anyone raise doubts as to the validity of this interpretation, the scope of our enquiry may be widened by following the wise advice that: "in construing the Treaty its history should be consulted".

east by the Republic of Bolivia, and on the West by the Pacific Ocean, shall continue in the possession of Chile subject to Chilean laws and authority during a period of ten years to be reckoned from the date of the ratification of the present treaty of peace." After the expiration of that term further arrangements were provided for. Cf. L. H. Woolsey: *The Tacna Arica Settlement*, "American Journal of International Law" No. 3, 1929, p. 606.

[21] Central American Court of Justice in Honduras v. Salvador and Guatemala December 19, 1908, "American Journal of International Law", v. 3, p. 730.

Potsdam was not born in a vacuum; it had its "before" and "after". Its formal and legal conclusions were the outcome of a certain process.

Already in the early stages of the war Poland's representatives had advanced the claim that her frontier with Germany ought to be moved considerably westwards. It met with the full support of the U.S.S.R. An official document on the subject was submitted to the then President of the United States[22].

The first consensus of the Great Powers on the subject was recorded in 1943[23].

Claims to a frontier on the Oder and Neisse became part of the political programme of the Polish patriotic forces fighting German aggression and occupation[24].

[22] The Memorandum of General W. Sikorski to President Roosevelt (December 1942).

[23] This was obtained during Mr. Eden's visit to Washington (March 12, 1943): "Poland wants East Prussia and both the President and Eden agree that Poland should have it." R. E. Sherwood: *op. cit.*, p. 710; see also Hopkins talks with Mr. Litvinoff, then U.S.S.R. Ambassador to the U.S.A., who expressed his Government's consent to this (March 16, 1943). Finally confirmed at the Moscow Conference of the Foreign Ministers of the United Kingdom, the U.S.A. and U.S.S.R.—October 25, 1943: "We all agreed that Germany should give up all her conquests and that East Prussia should be separated from Germany". Cordell Hull: *op. cit.*, p. 1287.

[24] They found their expression in a manifesto of the democratic, social, political and military organizations in Poland, December 1943; Declarations of the National People's Council (KRN) and of the Polish Committee of National Liberation.

They saw in the destruction of Prussianism, which for ages had been a spearhead of aggression and lived on land which had been Polish, the only guarantee for Poland's security and future. A further step was taken at Teheran, where it was stated that Poland's frontiers "should be between the so-called Curzon line and the line of the Oder . . .[25]. The year 1944 saw the plans take more specific shape[26]: official support of the British Government for the Oder frontier was expressed in what has since become known as "the Cadogan letter"[27]; so

[25] The suggestion was made by the Soviet Union, confirmed by Churchill: *Closing Ring*, London 1954, p. 361–362; the formula suggested by Churchill read: "It is thought in principle that the home of the Polish State and nation should be between the so-called Curzon line and the line of the Oder, including for Poland East Prussia (as defined) and Oppeln; but the actual tracing of the frontier line requires careful study, and possibly disentanglement of population at some points;" see Churchill: *op. cit.* pp. 356–357, 450; see also Leahy: *I Was There*, London 1950, p. 249; from these reports it becomes clear that the representatives of the other two Powers concurred.

[26] See: exchange of letters between Stalin and Churchill of February 14, 1944, which confirmed their agreement on the subject; Hull: *op. cit.*, p. 1438. Some weeks earlier the official Soviet Press Agency Tass issued the following statement: "Poland's western boundaries must be extended by the inclusion of historic Polish land, which previously had been taken by Germany, for otherwise the unification of the whole Polish nation in a State, which would also obtain the necessary access to the Baltic Sea, would be impossible. The just desire of the Polish nation to unity in a strong and independent State should command recognition and support." (January 11, 1944).

[27] Sir Alexander Cadogan, then Permanent Under-Secretary of State, stated as follows: "You enquired whether His Majesty's Government were definitely in favour of advancing the Polish frontier up to the line of the Oder, to include the port of Stettin. The answer is that His Majesty's Government do consider that Poland

did declarations by Mr. Churchill[28], while President Roosevelt[29] and General de Gaulle[30] agreed with the plans concerning this frontier. Mr. Churchill made the situation quite clear when he said: "The Poles are free, as far as Russia and Great Britain are concerned, to extend their territory at the expense of Germany to the West[31]". Before the year was over there also came a statement by the then Secretary of State, Stettinius, who, while maintaining "that questions relating to boundaries should be left in abeyance until the termination of hostilities" confirmed that the case of the future frontiers of Poland was one of a different nature and that "if a mutual agreement is reached by the United Nations directly

should have the right to extend her territory to this extent." (Letter dated November 2, 1944); "Zbiór Dokumentów" (Documents Series), Warsaw 1947, No. 10, pp. 223–224.

[28] Speaking in the House of Commons on February 22, 1944, Mr. Churchill said: "Marshal Stalin and I also spoke and agreed upon the need for Poland to obtain compensation at the expense of Germany both in the north and in the west"; see: *The War Speeches of the Rt. Hon. Winston S. Churchill*, London 1952, p. 91.

[29] President Roosevelt stated: "In regard to the future frontier of Poland, if a mutual agreement on this subject including the proposed compensation for Poland from Germany is reached between the Polish, Soviet and British Governments, this Government would offer no objection"; see: *Poland, Germany and European Peace, Official Documents, 1944–1948*, London 1949, p. 107.

[30] Cf. Charles de Gaulle: *Mémoires de guerre. Le Salut (1944–1946)*, Paris 1959, p. 75; also a report from the conversations between Stalin and General de Gaulle held in Moscow, December 2–6, 1944, quotes General de Gaulle: "He agrees with Soviet proposals concerning Poland's western frontiers". See: "International Affairs", Moscow 1959, No. 4, *Documents* pp. 20–21.

[31] Speech in the House of Commons, December 15, 1944, *Parliamentary Debates, House of Commons*, vol. 406, No. 1, col. 1484.

concerned, this Government would have no objection to such an agreement . . ."[32].

In fact one can safely state, on the basis of the available evidence, that such an agreement did already exist by the end of 1944 and was consented to by the United States Government.

This brings us to the fateful year of 1945. At Yalta the three Heads of Government solemnly stated that "they recognize that Poland must receive substantial accessions of territory in the North and West". They added that: "They feel that the opinion of the new Polish Provisional Government of National Unity should be sought in due course on the extent of these accessions . . ."[33].

By so doing they entered a most solemn obligation not only to recognize Poland's claims as to her western frontier and to give them effect but, what is more, to give her Government official status in the decision making.

The solemn and binding character of this obligation has been confirmed by the very persons who freely entered it and could give it an authentic interpretation[34].

[32] Documents on American Foreign Relations, vol. 8, p. 898.

[33] The Declaration of Yalta of February 11, 1945, Chapter VI, *United Nations Documents 1941–1945*, Royal Institute of International Affairs, London 1946, p. 146–147; the problem of the future delimitation of the frontier referred to by the declaration will be dealt with separately.

[34] Winston Churchill declared in the House of Commons on February 27, 1945: "The three Powers have now agreed that Poland shall receive substantial accessions of territory both in the North and in the West. In the North she will certainly receive, in the place of a precarious Corridor, the great city of Danzig, the greater part of East Prussia west and south of Königsberg and a long, wide sea front on the Baltic. In the West she will receive the important industrial province of Upper Silesia and in addition, such other

Further evidence in support of this has been offered by others in high office who were present at the time[35]. Whatever doubts may have existed, the Yalta Document has laid down the basic principles concerning Poland's future border in the West[36].

They were part of much more wide and far reaching decisions bound up with plans to bring the war to a

territories to the East of the Oder as it may be decided at the peace settlement to detach from Germany after the views of a broadly based Polish Government have been ascertained." *Parliamentary Debates, House of Commons, Official Report,* vol. 408, No. 31, col. 1277–1278. These questions were more specifically dealt with at Potsdam—cf. also Churchill: *Triumph and Tragedy,* Boston 1953, in which he gives his version of the discussion at Yalta. From it one can conclude that specific proposals as to the frontier ("from the town of Stettin which would be Polish, and thence southward along the river Oder and the Western Neisse") had been submitted by the Soviet delegation, his reaction having been as follows: "I reminded my hearers that in the previous talks I had always qualified the moving of the Polish frontier westward by saying that the Poles should be free to take territory in the West, but no more than they wished or could properly manage . . ." (p. 374).

President Roosevelt reported to Congress on March 1, 1945: "Throughout history Poland has been the corridor through which attacks on Russia have been made. Twice in this generation Germany has struck Russia through this corridor. To insure European security and world peace a strong and independent Poland is necessary to prevent that from happening again."

[35] Cf. E. R. Stettinius: *Roosevelt and the Russians, The Yalta Conference,* New York 1949, p. 212, though he indicates that the U.S. delegation seemed to have had certain doubts as to the line on the "Western Neisse".

[36] Leahy: *op. cit.,* p. 378—the changing of the wording of the original "the three Powers" to "the three Heads of Government", and "agree" to "consider", as indicated by Stettinius (*op. cit.,* p. 271) has no bearing on the legal validity and implications of the document. One should point out that the word "recognize" applied with regard to Poland's western frontier, is much stronger than the word "con-

successful end and to lay the foundations for the world that would emerge on the morrow of victory. Detailed stipulations on the frontier were to come later—in the Potsdam Agreement, which was the next and decisive instrument.

The logic of events leaves no room for doubt. Suffice it to quote the words which preface the substantive provision: "In conformity with the agreement on Poland reached at the Crimea conference . . ."

The road to it is therefore clear. It had been paved by discussions, consultations, and exchanges of views, which eliminated whatever differences may have existed. No one could have expected that a decision of so far reaching consequences would be arrived at without difficulties. But they were overcome. The stages that lead to Potsdam show this beyond doubt, as does the instrument agreed upon and signed on August 2, 1945.

Thus the acts and facts preceding it "would not furnish anything calculated to overrule the construction indicated by the actual text"[37], and the conclusions to be deduced from it. What they do—in fact—is to reinforce them.

sider" referring to her eastern boundary. Therefore all attempts which have been made to weaken the binding character of the documents (particularly by German writers, such as H. G. Sasse: "Die Ostdeutsche Frage auf den Konferenzen von Teheran bis Potsdam", *Jahrbuch für die Geschichte Mittel- und Ostdeutschland*, vol. II, Tübingen 1953) cannot be considered seriously; nor can attempts to use the proceedings of the Yalta Conference in political controversies both of an international and national character. Cf. the Documents released by the State Department, March 16, 1955; the discussion in the House of Commons following their publication (March 17 and March 22, 1955).

[37] Cf. The Permanent Court of International Justice in the S. S. Lotus Case, A/B No. 22, p. 67.

As indicated earlier, the Agreement signed at Potsdam had its "before".

It has obviously also had its "after". Let us therefore cover the same road going forward from 1945 to 1964.

On the basis of these decisions taken during the years 1942–1946 millions of Poles have settled within this area and almost the entire former German population has been evacuated in accordance with international agreements freely arrived at, duly concluded and carried out. Those who remained, left later.

Poland has permanently established herself on the Oder and Neisse frontier. The territories within it were definitively integrated into Poland by a decree of November 13, 1945[38]. Other legislative acts were to follow. Only one thing remained to be done, that is, the final delimitation of the frontier, in fact the "Western frontier". Whatever meaning may be attached to this phase of frontier-making, it is clear that it constitutes its final stage[39]. The language used in the instrument of Potsdam did not contain all the details of the frontier. It confined itself to stating that it should run: "from the Baltic Sea immediately west of Swinemünde and thence along the Oder River to the confluence of the western Neisse River and along the western Neisse to the Czechoslovak frontier..."

Thus, it was not meant to be one of those straight-line boundaries, sometimes described as "astronomic

[38] Decree of November 13, 1945, "Dziennik Ustaw" (Polish Official Gazette) 1945, No. 51, p. 295.

[39] This is in no way affected by the Potsdam Agreement using also another term: "final determination". It was rightly pointed out that it means "physical determination".

lines", determined "by means of astronomic and geodetic observations"[40]. Its delimitation therefore was an obvious necessity. What could have been meant by it? Nothing else but the fixing of the boundary on the spot and the simultaneous placing of pillars. In practice two terms are used to describe this stage of frontier-making: delimitation and demarcation. This encouraged some writers to draw a distinction between them. So it was suggested that "delimitation" meant "the determination of a boundary line by treaty or otherwise, and its definition in written verbal terms", while "the actual laying down of a boundary line on the ground and its definition by boundary pillars or other physical means" was held to mean its "demarcation"[41].

Though sometimes this may be true, in most cases both terms are used indiscriminately in the latter sense. The Treaty of Peace with Italy (of February 10, 1947) used a different language: "the determining on the spot the exact frontier" (art. 5/5). In particular, where the relevant instrument defines the frontier and leaves its tracing in detail for further action—the term delimitation is frequently employed[42]. This indeed was the case with the western frontier of Poland. Prior to the decision taken on it, maps were used, and the line along which it was meant to run was clearly defined. Thus the only thing left to be done was to "lay it down on the ground"

[40] See Boggs: *International boundaries*, New York 1940, p. 157.

[41] H. McMahon: *International boundaries*, "Journal of the Royal Society of Arts", vol. 84, November 1935, pp. 2–16.

[42] Cf. the Delimitation Commission set up by the Conference of Ambassadors on July 28, 1920: "to mark out locally the frontier line . . ."; see: Advisory Opinion of the Permanent Court of International Justice, Series B, No. 8, of December 6, 1923, p. 39.

"to define it by boundary pillars" and its formal confirmation in a later international instrument. The Potsdam agreement used the word "delimitation".

The process to be performed was therefore one of a practical nature, implying the possibility of only some slight deviations from the existing frontier line. In principle and according to practice they can never be of a serious nature; what they amount to are modifications "justified by reason of the interests of individuals or of communities in the neighbourhood of the frontier line and having regard to special local circumstances"[43]. Thus they are limited by their very character, in some cases they could not exceed 0·5 kilometre[44].

These considerations lead to the following conclusions: the western frontier of Poland having been defined, the delimitation to be carried out meant: its detailed specification, the actual laying down of the boundary line and its formal confirmation. This is what may be called "the clear meaning" of the agreement reached, and none of the circumstances surrounding it could justify a different interpretation. In the language of the Potsdam Agreement the delimitation was to "await the peace settlement".

What was intended must have been a general, all embracing settlement of the German problem with the

[43] As above at 42.

[44] "...the Commissioners shall be allowed to depart by 0·5 kilometre from the line laid down in the present Treaty in order to adjust the frontier to local geographical and economic conditions, provided that no village or town of more than 500 inhabitants, no important railroads or highways, and no major power or water supplies are placed under a sovereignty other than that resulting from the delimitations laid down in the present treaty". (art. 5/5 of the Treaty of Peace with Italy, 1947).

participation of one German Government. For reasons well known (and there seems no need to dwell on them in detail) instead of one, two German States have come into being.

One of them, the German Democratic Republic, bordering Poland, and so the State most directly concerned, recognized "the established and existing frontier". Its definition, contained in the Potsdam Agreement was taken as basis, and both States proceeded with its delimitation. Following the work carried out by a Mixed Commission on the spot, this was finally approved by the Act signed at Frankfurt-on-Oder on January 27, 1951[45]. These documents constitute the last link in the chain of events that lead to a permanent, definitive and irrevocable settlement of Poland's western frontier. It has received the solemn consent of the most interested and directly concerned parties which is obviously what counts[46].

The German Democratic Republic with which Poland maintains friendly and good-neighbourly relations, has thus implemented the basic provisions of the allied decisions, taken at a time when no German government was in existence. Suffice it to mention that for her part the German Federal Republic also proceeded to the con-

[45] Three instruments were signed: the Declaration of the two Governments, Warsaw, June 6, 1950; an Agreement on the Delimitation of the Frontier, Zgorzelec, July 6, 1950. An Act recording the Delimitation, Frankfurt-on-Oder, January 27, 1951.

[46] Cf. the Arbitral Award in the Palmas case: "Territorial sovereignty is, in general, a situation recognized and delimitated in space, either by so called natural frontiers as recognized by international law or by outward signs of delimitation that are indisputed, or else by legal engagements entered into between interested neighbours..." Permanent Court of Arbitration, XIX, p. 16.

clusion of a series of frontier treaties which contain stipulations of a definitive character[47].

In the light of these events it is abundantly clear that this boundary, the subject of negotiations during the war years, defined at Potsdam in 1945, delimitated and marked by frontier posts has its firm foundations in law.

*

* *

More than eighteen years have passed since this frontier was established.

Poland maintains diplomatic relations with almost all states of the world. Foreign diplomatic missions in her capital are accredited to Poland within her present boundaries. Many consular officers have their seats in, or jurisdiction extended to, her Western territories. This is reflected also in the exequatur granted to them.

During these years Poland has concluded and continues to conclude treaties, agreements, conventions, international instruments of all sorts with states on all continents. They concern political, economic, technical, scientific and cultural issues. The states and governments

[47] For instance those with Belgium of September 24, 1956; with the Netherlands on March 1 and 2, 1957; with France, October 19, 1951; Cf. Rousseau: *La frontière de la France*, "Revue Générale du Droit International Public", No. 1, 1954, p. 51; another concerning the Saar, October 27, 1956; also with Switzerland.

The treaty with Belgium for instance states in art. 26 that the two Governments agreed to consider "comme définitive pour les H.P.C. la frontière établie par le traité". Cf. also Protocole Final; see: "Moniteur Belge", No. 235 of August 23, 1958; also R. Pinto: *Problèmes Juridiques de la Frontière occidentale de la Pologne*, Extrait de Hommage d'une Génération de Juristes au Président Basdevant, Paris 1960, pp. 10–11.

concerned have, throughout that time, been fully aware of the undeniable fact that in concluding and carrying out these agreements they did so with Poland within the present frontiers.

Thousands of foreign ships have entered and left the Polish harbours of Szczecin and Gdańsk. International communication in all fields, made accessible by modern technology and covering the whole territory, has been and is being maintained with foreign countries.

A special chapter is made up by agreements on compensation for property of other contracting states or of their nationals, situated within the new boundary. Their negotiating, signing and the acceptance of compensation from Poland can hardly be regarded as anything else but full recognition of her sovereignty over the area it concerned. How else could any claim be advanced? Could one possibly argue that financial compensation for property is asked and received from an authority which is only provisionally in control of the territory and whose legislative measures affecting this property are not regarded as a definitive and permanent regulation of the juridical status of the objects in question? The reply is self-evident.

Throughout these years Poland, as a member of many international organizations and party to treaties has been carrying out all the obligations resulting from the exercise of sovereignty over the territory within its present boundaries. Sovereignty is not only—as is well known—a right, it also involves duties, of both an internal and international character. For it has been rightly stated that: "it cannot be sufficient to establish the title by which territorial sovereignty was validly acquired at a certain moment; it must also be shown that the territorial sovereignty has continued to exist". ... "This de-

monstration consists in the actual display of State activities such as belong only to the territorial sovereign"[48].

This Poland has done. She has displayed all the activities of a state, "such as belong only to the territorial sovereign". But it is not of course on *uti possidetis ita possideatis* that her rights to this area are based: on the principle known and frequently invoked in Latin America[49] nor on what some view as its special application resulting from occupation in time of war[50].

By exercising the sovereign rights she has implemented the legal title, validly acquired at the time: and so given evidence that **she is the sovereign of that land in law and fact.** Both have determined its fate, as an integral part of Poland.

[48] Judge Huber in the Palmas case, Permanent Court of Arbitration P.C.A. XIX, p. 16.

[49] The Swiss Federal Council when called upon to arbitrate the dispute between Columbia and Venezuela held that this general principle: "offrait l'avantage de poser en regle absolue qu'il n'y a pas en droit, dans l'ancienne Amerique espagnole, de territoire sans maître... Enfin, ce principe excluait les tentatives d'Etat colonisateurs européens sur des territoires qu'ils auraient pu chercher à proclamer *res nullius*." *Reports of International Arbitral Awards*, United Nations, vol. I, p. 228.

The principle found its expression in two versions: *uti possidetis juris* (invoked by Columbia *ut supra*) *or uti possidetis de facto* (invoked by Brasil).

See also: The treaties between Columbia and Ecuador (of July 9, 1856, art. 26); Ecuador and Peru (August 1, 1887); also the Tacna–Arica case between Peru and Chile (decided March 4, 1925).

[50] Cf. *uti possidetis* as the acceptance of the *status quo* at the end of hostilities: "...a belligerent in occupation of the enemy Country or part of it at the close of hostilities, or of enemy colonial or overseas territory, would in the absence of any provision to the contrary in the peace treaty, be entitled to remain there." G. G. Fitzmaurice: *The Juridical Clauses of the Peace Treaties*, Recueil des Cours, Académie de Droit International, La Haye 1948, vol. II, p. 279.

WHENCE THE QUESTION MARKS?

The patient reader having reached this stage, may justifiably ask: if the case is so clear, why this recital of historical facts, why all this legal reasoning?

They seem necessary, for contrary to logic, law, and facts, reasons continue to be advanced against the final and irrevocable recognition of this frontier. Some of their advocates have not only just stopped the clock somewhere in the past, but even attempted to take us back to the days prior to 1939, as if none of the events which were at the root of the important decisions concerning Germany's and Europe's future, had ever occurred. Apparently unaware that no one has ever won an argument with history, they continue to be at odds with it.

For eighteen years now all sorts of contentions have been advanced, and new ones continually added to the catalogue of those already existing, all of them aimed at proving that this frontier is far from settled and the issues : allegedly open.

The main target is the document signed at Potsdam. Some argue that it is formally defficient and lacks the indispensable elements of a treaty obligations. Attempts have been made to reduce it to technical or administrative arrangements[51] or even to a "gentleman's agreement"

[51] Cf. Fritz Faust: *Das Potsdamer Abkommen und seine Völkerrechtliche Bedeutung*, Frankfurt 1959, pp. 50–51–53; before him E. Kaufman, who qualified it as a "Regierungsabkommen" or "Verwaltungsabkommen".

binding only the participating statesmen "person to person" and not their successors in office, nor the states they represented[52].

Similar conclusions have been drawn from the language of the instrument[53] and from the fact that it has not been ratified. However, in spite of the seriousness with which these claims have been advanced, they are far from convincing. Formal considerations have for a long time ceased to be indispensable conditions of treaty validity: modern practice indicates a growing trend towards ever more simplified instruments[54]. Important obligations are entered into, far reaching transactions concluded by a mere exchange of notes[55]. One may recall that a statement made by a Foreign Minister some 45 years ago was held binding and as a result of his undertaking, his country "under an obligation to refrain from contesting" the sovereignty of another state over a great island and "to refrain from occupying part of

[52] H. Kraus: *Die Oder–Neisse Linie, Eine völkerrechtliche* Studie, Köln 1954, p. 36.

[53] So it is claimed that Poland having become the "administrator" of the territories in question, acquired the right to "government" but no "sovereignty"; she could act merely as trustee.

[54] Cf. M. Lachs: *Le développement et les fonctions des traités multilatéraux*, Recueil des Cours, Académie de Droit International, La Haye 1957, p. 242 et seq.

[55] Cf. the exchange of notes between the United States and Great Britain concerning the acquisition by the United States of naval and air bases on British territories in exchange for fifty destroyers (the so-called Hull–Lothian Agreement, September 2, 1940). Cf. also art. 5 of the Harvard Draft Convention on the Law of Treaties: "Although a treaty, as the term is used in this Convention, must be a formal instrument, no particular form is required"; Supplement "American Journal of International Law", vol. 29, No. 4, October 1935, p. 722.

it"[56]. It was admitted that the declaration in question amounted to an agreement: "As regards the form, it should be noted, to begin with, that as both Parties are agreed as to the existence and tenor of these declarations the question of proof does not arise. Moreover, there does not seem to be any rule of International Law requiring that agreements of this kind must necessarily be in writing in order to be valid"[57].

Not only a lawyer, but any layman even might wonder how the Potsdam Agreement, a document of such far reaching implications[58], could be possibly qualified as a "gentleman's agreement". The setting up of a Council of Foreign Ministers, the formulation of Political and Economic Principles to govern the treatment of Germany in the initial control period, German Reparations, War Criminals, Austria, Poland, Conclusion of Peace Treaties, Admission to the United Nations, Territorial Trusteship, Revised Allied Control Commission Procedure in Rumania, Bulgaria and Hungary, Orderly Transfers of

[56] The Legal Status of Eastern Greenland, case before the Permanent Court of International Justice (Judgement 1933) Report: P.C.I.J. Series A/B, No. 53, p. 73.

[57] Judge Anzilotti, though dissenting but for different reason; *ut supra*, p. 92.

[58] The text itself makes it clear. In the introduction (par. 3) the signatories state: "Important decisions and agreements were reached". The substantive part of the Communique is preceded by the words: "The text of the agreement is as follows"..."official statements in the form of Reports of Conferences signed by the Heads of States or Governments and embodying agreements reached therein may, in proportion as these agreements incorporate definite rules of conduct, be regarded as legally binding upon the States in question." Oppenheim-Lauterpacht: *International Law*, 8th Edition, London 1955, v. I, p. 873. The documents of Yalta and Potsdam are cited "as examples".

German Populations—these headings clearly indicate the magnitude of the problems upon which decisions were reached. Can any attempt to reduce their importance by minimizing the juridical character of the document be taken seriously? Nor is there any force in the attack against it for lack of ratification. In dealing with this issue one should, of course, bear in mind that ratification cannot be dispensed with when it is provided for in the international instrument concerned or in the authorization of the persons who negotiated or signed it[59]. This was not the case. True enough, it may be argued that it "is necessary in principle" even if not expressly provided for[60]. But practice offers abundant evidence that it is very frequently dispensed with. This intention of the parties may result from specific stipulations. The treaty of Alliance between Great Britain and Japan (January 30, 1902) came into force immediately after the date of signature. Its art. 6 so stipulated. In other cases the intention may be presumed. As to the Potsdam Agreement its reading makes it clear that it was meant to have immediate effect. Most of the problems dealt with called for prompt action, a series of decisions and measures followed, a whole machinery was set in motion. This, however, is only one side of the problem. The other concerns the personal importance of the signatories, namely Heads of States and Heads of Governments, accompanied by their Foreign Ministers. This leads

[59] "...only those treaties need ratification which say so in terms, or as to which an inference of an intention that there should be ratification can be drawn... in regard to all other treaties it can be assumed that they are not intended to be ratified...". G. G. Fitzmaurice: *Do Treaties Need Ratification*? "British Yearbook of International Law", vol. 15, 1934, p. 122.

[60] Cf. Oppenheim-Lauterpacht: op. cit. p. 906.

to the conclusion that ratification was not intended[61]; In virtue of their offices and functions there was every reason to assume that they possessed the authority to commit their respective states. In fact the presumption was never rebutted, the consent never invalidated[62].

The same applies to the language of the document. Those who detach words from the whole and subject them to minute scrutiny in isolation go but skin deep into their meaning and seem to forget Lord Bacon's wise dictum: *Noscitur a sociis.*

Thus they disregard the context of the provisions in question and the manifest purpose of the instrument as a whole. By a specious alteration they distort its meaning. The irrationality of attaching exaggerated importance to particular words of the agreement instead of "deducing from its purport the consequences most in conformity with the order of ideas and interests to which it corre-

[61] "... if Heads of States, whether they have the full treaty-making power or not, sign a treaty in person and make no provision in the treaty for reservation of the right of ratification and in no other way indicate an intention to reserve that right, it seems that it can be safely assumed that the intention was to dispense with the necessity of ratification; Harvard Draft Convention on the Law of Treaties, *ut supra*, p. 768. Cf. Report of the International Commission XIV, 1962, art. 4 and the Commentary to it, p. 7 *et seq.*

[62] Though there is no need to deal with problems of domestic legislation in this respect.

Interesting views on the subject were expressed by Robert A. H. Jackson in his opinion as Attorney General concerning the so-called Hull-Lothian Agreement of September 2, 1940; see also Mr. Justice Sutherland, writing for the Supreme Court of the U.S. in U.S. v. Curtiss–Wright Export Corp. *et al.*, 299, U.S. 304, quoted by Jackson; in Wallace McClure: *International Executive Agreements*, New York 1941, pp. 394–403. Cf. Report of the International Law Commission, XV, 1963, art. 31 and the Commentary to it, p 3 *et seq.*

sponds"[63] is bound to lead to absurd consequences. These, of course, cannot be accepted.

The main objections continue to come from West Germany, and they concern both the form and substance of the decision taken. The view has been advanced that it was contrary to international law since it implied annexation of German territory. Yet it was made clear that the assumption by the Four Powers of authority and powers "does not effect the annexation of Germany"[64], that : "It is not the intention of the Allies to destroy or enslave the German people", and "that the German people be given the opportunity to prepare for the eventual reconstruction of their life on a democratic and peaceful basis"[65]. Following the unconditional surrender of Germany, the supreme authority "with respect to Germany, including all the powers possessed by the German Government, the High Command and any state, municipal or local government or authority" was assumed by the four occupying powers as proclaimed on June 5, 1945. They did so since there was "no central government or authority in Germany capable of accepting responsibility for the maintenance of order, the administration of the country and compliance with the requirements of the victorious Powers".

[63] The Central American Court of Justice in the case between Honduras v. Salvador and Guatemala, December 19, 1908, "American Journal of International Law", vol. 3, pp. 729–730. As to the text of the Potsdam Agreement: It is rightly pointed out: "it must have been foreseen that despite the formulas in the preamble, it meant the permanent detachment of this part of Germany"; see H. Feis: *Between War and Peace, The Potsdam Conference*, Princeton 1960, p. 260.

[64] Declaration regarding the defeat of Germany and the Assumption of Supreme Authority with respect to Germany, Berlin, June 5, 1945.

[65] The Potsdam Agreement.

The same document indicated the intention of its signatories on this subject : "The Governments of the United Kingdom, the United States of America, The Union of Soviet Socialistic Republics, and the Provisional Government of the French Republic, will hereafter determine the boundaries of Germany or any part thereof..."[66]. What the three Powers proceeded to do at Potsdam, was precisely to implement the decision taken two months earlier[67].

Since none of the constitutive elements of what is called "annexation" were there, consequently the decision concerning frontier changes and their implementation cannot possibly be so described. As to the substance of the issue: was it not clear from the very outset that when the war came to an end, Germany could not be restored to her territorial *status quo ante*, as this was manifestly against the interests of her peaceful neighbours, against the interest of peace and security of Europe as a whole? This was inevitable. It affected also some of Germany's allies.

The advocates of the afore-mentioned views seem also to forget that the frontiers as finally drawn after World War I hardly corresponded to the vital interests of some other European nations, for instance Poland.

There is also no validity in the claim that the establishment of Poland's western boundary violates the Atlantic Charter (of August 14 and September 24, 1941).

In fact, this document was never regarded by its

[66] Declaration regarding the defeat of Germany, Berlin, June 5, 1945.

[67] For the purpose of the present considerations there is no need to analyze the status of Germany under occupation on which many views have been expressed. If suffices to state that the rights of the four occupying powers, seem in this respect unqestionable.

signatories as a binding international agreement, but merely as a set of common principles in the national policies "of the respective countries"[68]. What is more, it was made clear from the outset that whatever its character or force, it would not apply to Germany and no rights could accrue to her from it[69].

Some moral issues are also involved. The Atlantic Charter was proclaimed in 1941. For four more years Germany was engaged in a ruthless struggle, violating all possible laws of warfare, destroying millions of human beings, and uprooting whole nations. If ever there was a state and government which acted contrary to the spirit and letter of the Atlantic Charter, it was Nazi Germany.

Now, after the war is lost, some resort to the ingenious device of invoking that document. There is no room

[68] "Declarations of this kind may be very important, but they hardly comprise transactions out of which follow rights and duties of other States..." This is, for instance, the position with regard to the so-called Atlantic Charter of August 14, 1941—Oppenheim–Lauterpach: *International Law*, VIII ed. 1955, vol. I, p. 872.

[69] Cf. the Declaration of the Governments of Poland and Czechoslovakia made on that occasion (September 24, 1941): "The two Governments are convinced that the carrying out of the Roosevelt–Churchill declaration in the spirit of justice, which does not admit the uniformity of treatment of those guilty of provoking world wars and of the victims of these wars, will lay the foundations...". Holborn: *War and Peace Aims of the United Nations* (Sept. 1, 1939, Dec. 31, 1942), Boston 1943, p. 465.

See also Winston Churchill: "The Atlantic Charter in no way binds us about the future of Germany, nor is it a bargain or contract with our enemies". Statement of May 24, 1944. Also Mr. Eden's statement which makes the position even more clear: "Germany would not as a matter of rights be able to claim benefit from the Atlantic Charter in such a way as to preclude the victorious Powers from making territorial adjustment at her expense". *Parliamentary Debates, House of Commons—Official Report*, vol. 397, No. 35, p. 936/7 of February 23, 1944.

for doubt that the claim has no legal as well as moral basis[70].

But apart from all this, population transfers determined the issue.

It is further alleged that art. 2/4 of the Charter of the United Nations was violated[71]. With all due respect, this makes no sense. The obligation to "refrain" "from the threat or use of force against the territorial integrity or political independence of any state, or in any other

[70] The London "Times" pointed out at the time, that in the interpretation of the Atlantic Charter "economic well-being and military security" should prevail. ("The Times", August 18, 1941).

Statement by Mr. Attlee: "... One thing is quite certain. If you ask who is responsible for these movements, this terrible thing that has smitten Europe, there is no doubt at all that it is the Nazi rulers of Germany, and the people of Germany who actively supported them and, in a lesser degree those who have acquiesced, and who have been quite satisfied as long as things went well, I do not suggest that you can draw an indictment against a whole people, but neither can you relieve of responsibility a whole people.... I do not believe in treating them as they have treated other people, but I cannot admit that they have a claim to appeal to right and moral principles which they have utterly disregarded. Therefore.... if it is found necessary to take certain areas in order to enable the Polish people to lead a free, full life, I shall not complain—and I do not think that the Germans have a right to complain. I shall judge all these changes, not by whether they fit into past history or whether they are performing an act of revenge, but entirely as to whether they will make for a peaceful Europe in future". Speech of Mr. Attlee (as he then was) Deputy Prime Minister, House of Commons, March 1, 1945, *Parliamentary Debates, Official Records*, vol. 408, No. 41, p. 1617.

Cf. also the statement of the representative of Australia made at the meeting of the Deputy Foreign Ministers for Germany held on January 23, 1947: "In dealing with the settlement of Germany there may be cases where claims made on grounds of security should be regarded as of paramount importance."

[71] See Kraus: *Die Oder-Neisse Linie*, Köln 1954, p. 17.

manner inconsistent with the purposes of the United Nations"—laid down as one of the principles of the Charter, was obviously meant to apply to the world as it emerged from the World War II. Wherever, as a result of inter-allied decisions, territorial changes had taken place, it could not have been intended otherwise than to safeguard the rights of states and their independence within these new frontiers and not the *status quo ante*. Any different reading of the text would amount to sanctioning the fruits of aggression and occupation at the expense of their victims. This is exactly what some West German writers, by invoking article 2/4 of the Charter invite us to do. As in any other case, the provisions ought to be read in the context of other stipulations of the document, in particular of the preamble of the Charter. In the case before us, was it Poland who failed to "refrain" "from the threat or use of force against the territorial integrity or political independence" of ... Germany?

The situation is made clear also when one looks at the sequence of events: the Charter was signed more than four months after the basic decisions concerning Poland's western border had been taken (the Yalta Agreement); it entered into force almost three months (October 24, 1945) after the Potsdam Agreement.

Finally, all arrangements vis-à-vis the enemy states ought to be interpreted in the light of art. 107 of the Charter.

This excludes from the operation of the Charter any such "action", "taken or authorized" "by the Governments having responsibility" for it[7a].

[7a] "Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having respon-

Thus, whatever erroneous intention or distorted meaning[73] is read into art. 2/4 of the Charter, on the issue dealt with article 107 is bound to prevail.

It has also been argued that the three Heads of Governments had no right to act in Potsdam as they did; that Germany was not an addressee of the Potsdam decisions, which are therefore to be considered, as far as Germany is concerned, as *res inter alios gestae*[74].

Little need be said to rebut this claim. As indicated earlier: they had full authority to act as they did. In determining the border of Poland, they were obviously entitled to secure Germany's compliance with this decision. The claim, therefore, that the decisions constituted *res inter alios gestae*, cannot be accepted for it lacks any legal foundation.

But apart from the considerations mentioned above, this was one of those cases where the interest of international peace and security required adequate measure against a state which by engaging in a war of aggression, by attacking the very existence of nations and states did violate basic principles of International Law. The members of the allied coalition acting as they did represented the will of the peace-loving nations and were fully entitled to do it.

It is worth recalling, that the Paris Peace Treaties

sibility for such action." Cf. Goodrich-Hambro: *Charter of the United Nations*, Commentary and Documents, Second Edition, Boston 1949, pp. 534—536.

[73] Kraus misleads his readers claiming that what he calls "the annexation" of former German territories was accomplished under the regime (unter der Herrschaft) of the Charter, on February 19, 1947 (alternatively January 11, 1949), *op. cit.*, p. 17.

[74] Kaufman: *Deutschland's Rechtslage unter der Besetzung*, Stuttgart 1948, p. 16; Cf. also R. Laun: *Das Recht auf die Heimat*, Hannover 1951, p. 17.

(of 1947), containing a series of territorial stipulations, provided for their entry into force upon the deposit of ratifications by some of the allied powers only[75]. Thus even a refusal by one of the States most concerned could have had no effect on their validity.

*

* *

Over and above the list of claims indicated earlier some others have been added, and among them the most noteworthy is that of the so-called "right to the homeland" ("Recht auf die Heimat"), advanced under the guise of the principle of self-determination[76]. In its background lie recent developments and the full recognition of self-determination as a binding principle of contemporary International Law. What is accorded to the nations of Asia and Africa cannot be denied to an old nation in the heart of Europe—so runs the line of reasoning. How deceptive and how confusing it is! The right of an individual to settle in a given area is obviously one thing, while the right of every nation to self-determination, to the formation of an independent state is another.

[75] Cf. art. 90 of the Treaty of Peace with Italy: "The present Treaty of which the French, English and Russian texts are authentic, shall be ratified by the Allied and Associated Powers. It shall also be ratified by Italy. It shall come into force immediately upon the deposit of ratifications by the Union of Soviet Socialist Republics, by the United Kingdom of Great Britain and Northern Ireland, by the United States of America, and by France." See also: art. 36 of the Treaty with Finland (U.S.S.R. and U.K.); art. 42 of the Treaty with Hungary (U.S.S.R. U.K. and U.S.A.); art. 38 of the Treaty with Bulgaria (U.S.S.R. U.K. and U.S.A.) and art. 40 of the Treaty with Rumania (U.S.S.R., U.K. and U.S.A.).

[76] It gained momentum with the proclamation of the so-called "Charter of Expelled Germans", at a mass meeting held at Stuttgart in 1950; see R. Laun: *Das Recht auf die Heimat*, Hannover 1951.

It is this strange interpretation of the principle of self-determination in favour of Germany, which lead in the days of Hitler its denial to other nations particularly those neighbouring with Germany. The "right to the homeland" has its origin in what was called "Volks-gruppenrecht" in the years prior to 1939. On this basis claims were advanced for a special, privileged treatment of German minorities; this in turn was used in order to organize them into militant groups, fed with hostility against the countries they lived in—finally as spring-boards of expansion and aggression, a threat to the life of other nations. The right of self-determination, accord-ed to-day to all nations, however, cannot be exercised at the expense of others: its borders are fixed, where the same right of another nation begins. Both the old and new version of "the right to the homeland" are incom-patible with it, being in fact, its illegitimate off-springs. To prevent the repetition of such events of the past the population transfers were necessary: Germans who lived in Poland (and in other countries of Central and Eastern Europe) were transferred nowhere else but to Germany and no one could deny that this has been and is their homeland. They were transferred from territories which never were or ceased to be German. Or was it perhaps that Hitler by settling Germans in Eastern Europe, made Poland *inter alia* into the homeland of Germans? Those millions of Poles living now in Poland's western terri-tories are within their homeland, as are the Germans who moved into Germany. How could one possibly invoke the principle on behalf of a people who no longer live in the area concerned[77]?

[77] Cf. the very pertinent analysis of the problem by Elisabeth Wiskeman: *Germany's Eastern Neighbours*, London 1956; she rightly

It is noteworthy that this line of reasoning does not stop at Germany's frontier of 1937. It goes much further— back to Imperial Germany of 1914. The analogy is so striking that nothing more need be said on the subject.

No student of International Law can admit the existence of this "right to the homeland". It is therefore of little avail to invoke the United Nations Declaration of Human Rights or the Genocide Convention. Not even by a very long stretch of the imagination can this irrational claim be substantiated[78].

The claim has been accompanied, as it were, by a two-fold argument: one—that the Germans who have been transferred have never taken root within Germany's new frontiers; two—that Poland has been unable to take adequate care of the area in question, which can be restored to normal life only by the re-settlement of the German population. Those who have followed events in this field must have been struck by the mass of written and spoken words directed to prove these twin allegations. Both of them have turned out to be utterly false, nothing short of fairy-tales.

The most reliable authorities—facts and figures—confirm that most of the Germans transferred to the Federal Republic have been entirely integrated in their

poses the question: "Was it a violation of Heimatrecht when poverty drove a man before 1939 to leave a poor cottage in eastern Germany in order to earn better wages in a West German factory? And again how long could Heimatrecht be maintained?–through how many generations?", at p. 183.

[78] Cf. R. Bierzanek: "*Volksgruppenrecht*" *and* "*Heimatrecht*", "Sprawy Międzynarodowe" (International Affairs), Warsaw 1960, No. 2; L. Ehrlich: *Recht auf die Heimat*, "Cahiers Pologne–Allemagne" No. 2, 1962, p. 19.

new surroundings. They have become part of her economic and political life: the problem no longer exists[79]. Is there any need for any additional evidence to counter the claim than the fact that the Federal Republic is to-day short of manpower, employing hundreds of thousands of foreign workers?

It can also be stated that the picture frequently painted of Poland's western territories constitutes a deliberate distortion of the truth[80]. It is presented with a blind eye, which refuses to see how the area has risen from the ruins of war by a miraculous effort on the part of those millions who have settled there. How distressing it is to see and hear the reaction of some people in Western Germany, official circles not excluded, to the truth about Poland. Suffice it to recall what happened to a West German journalist who dared to make a documentary film for Hamburg television on the reconstruction of Wrocław. He was violently attacked by political leaders and even members of the Federal Government, and abused at a rally in Cologne. This may seem incredible: but it happened on June 10, 1963.

He had done the unforgivable—he had dared to present the truth[81].

[79] "The vast majority are now part of the industrial labour force and many have done well in the professions and business"... "Given more time, integration could be complete. There is sufficient social and economic evidence to support this belief, and the political evidence is overwhelming"—wrote "The Times" on January 6, 1959—five years ago.

[80] Similar attempts were made after World War I, with regard to that part of Silesia which became part of Poland. Cf. J. A. Wilder: *The Polish Regained Provinces*, London 1948, pp. 21–22.

[81] Cf. press reports from the rally at Cologne wich was addressed also by Chancellor K. Adenauer. Inter alia "Le Monde", June 11, 1963. Also the reaction to E. Wiskeman's book which was called

These and similar arguments and methods are employed to justify the claim that the Oder–Neisse frontier is not acceptable, and that the German Reich continues to exist within the frontiers of 1937[82].

However, endless repetition cannot give force to views and positions which were devoid of it from the very outset. In the light of what has been said, they cannot possibly stand the test of law. Is it not ill-befitting for those German politicians and lawyers, some of them tainted with a Nazi record, to invoke the principle "*ex iniuria non oritur jus*"? Who was really guilty of "*iniuria*"? Whose rights were destroyed, whose territories seized and

"diabolically unfair" ("General-Anzeiger", Bonn, August 9, 1956); others described it as a regrettable distortion of the facts and a tendentious conglomeration with questionable motives. All this only because, having presented the historical and legal background of the decision concerning the frontier, she uncovered many of the springs and "secrets" of the so-called refugee organizations and their activities. A reply to her book was H. Toppe's: *Elisabeth Wiskeman und Deutschland's Nachbar Polen*, Munich 1958. It is to be regretted that under the guise of scientific analysis the author engaged in polemics of an undignified character. May one express the hope that quotations here will not produce further attacks on her. Cf. also the notorious publication of the Gottinger Arbeits Kreis: *German Eastern Territories*, Wurzburg 1959; based on distorted statistics, deliberately changed quotations and texts from Polish publications, aimed at showing how "badly" Poland has fared in this territory. See: *Achtung Falschungen*, Warsaw 1959, which contains a very detailed analysis of this publication.

[82] Cf. statements by Chancellor K. Adenauer: as that quoted in "Der Tagesspiegel" of September 10, 1949; of Herr von Brentano as Foreign Minister of the Federal Republic in the Bundestag on June 28, 1956; or of M. Lemmer, as member of the Government, speaking on behalf of it, "Tag der Heimat", Berlin, September 14, 1958; "Die Welt", Hamburg, on September 15, 1958, of the new Chanceller L. Erhard, March 22, 1964, Deutscher Ostdienst, March 26, 1964.

who was threatened with annihilation? No man and no state can be allowed to take advantage of their own misdeeds. As to the *jus*, it was brought into being to put an end to the evil of the past and to prevent its reoccurrence in the future, not as a retribution but to safeguard the vital interests of a severely tried nation which like any other has the right to life and security. It is not polluted nor does it stipulate for iniquity. It meets all the requirements of a binding rule of law.

Though the clock of history strikes year after year and we are approaching the 20th anniversary of Poland's rebirth and the nineteenth anniversary of the termination of World War II, the Federal Republic refuses and some Western Powers are reluctant to accord this frontier final recognition.

The parties to the postwar decisions on Germany though, seem to have been concerned with Poland's interests and security. The ink had hardly dried on the Potsdam Agreement when it was stated by the then President of the United States that: "The territory the Poles are to administer will enable Poland to support its population. It will provide a short and more easily defensible frontier between Poland and Germany. Settled by Poles, it will provide a more homogenous nation"[83]. Is it the case that some of them are less concerned with it now? Or having chosen a new path, having become a Socialist State has Poland a less valid claim to the frontier?

Yet, again and again Poland has been told by representatives of some Western Powers that the final delimitation of this frontier must await the peace settlement. That the term "peace settlement" was inserted in the text of the Potsdam agreement seemed fully justified. Those who drafted it could have anticipated that within

[83] President Truman: Broadcast to the Nation, August 9, 1945, the Vital Speeches of the Day, August 15, 1945, at p. 644,

a reasonable period of time a Peace Conference would be summoned to prepare the peace treaty with Germany. Later events destroyed that hope. The development of Germany has gone in two different directions: one in the East, another in the West. Under the circumstances the two most interested states had no need to wait too long before making the final arrangements concerning the delimitation of the frontier. Indeed, other states in their situation would have acted likewise.

Let us assume *ex hypothesi* that a peace treaty would have been signed at the time or even earlier. One could hardly say that the line drawn would have been much different. Delimitation is, after all, a process in which only minor frontier rectifications are carried out. Yet, Poland is being told that the final delimitation should await a peace settlement with Germany[84]. If this means a Peace Conference, it could not be held in the present situation without the due representation of both German states.

It should logically follow that the Powers concerned would be anxious to have such a conference called as soon as possible. Strangely enough this is not the case. It is well known that Poland has continuously supported the idea. We seem therefore to be caught in a vicious circle[85].

In the light of these reflections it should have become clear that what we face is rather a political attitude and

[84] Cf. replies to the Polish notes on the subject addressed to States, members of NATO, dated July 20, 1960—Note of the U.S. Government, August 11, 1960, of the United Kingdom Government, August 12, 1960 (Document Series) Zbiór Dokumentów, Warsaw 1960, No. 8–9.

[85] Cf. the very pertinent remarks on the subject by Ogrodziński: *The Oder–Neisse as seen in the West,* "Polish Perspectives" 1960, vol. III, No. 5, p. 6–7.

though the Powers concerned may try to back it with legal arguments, the divorce between law and politics is obvious. It takes us outside the realm of law. This raises an important question: can the refusal or delay in recognizing the finality of the boundary affect its definitive character?

The whole history of the case indicates that the process of "frontier-making" has been completed. It has passed through all the necessary stages: from preliminary negotiations through instruments determining the will to carry it out, to physical occupation, settlement and integration of the territory, and finally the placing of boundary posts along the line as signs for all to recognize. By now it has become, as indicated earlier, a part not only of the physical, but also the political and economic reality of Europe. This can be denied by no one just as no one can reasonably argue that there is any chance for its being changed. It is backed by history and the realities of life. Therefore to speak in terms of a problem which is "pending" or requires "settlement", is simply raising an artificial issue. In fact, this is now one of the most stable frontiers of Europe. What was once regarded as "the shifting sands of Eastern Europe" has ceased to exist. Across this frontier Poland has developed friendly and ever-growing relations with her neighbour in the West. The frontier is guaranteed by Poland's closest allies. In short: it is negotiable with no one and at no conference table.

Nor is it wise to view this frontier as an object of political bargaining, whatever its nature[86], or make

[86] It is worth recording that in the past the issue was raised in election speeches, for vote-winning purposes both in Germany and elsewhere. Mr. Byrnes' speech in Stuttgart, on September 6, 1946, was so interpreted, as it was delivered on the eve of elections in

its recognition conditional. This kind of reasoning and political action based on it are dangerous. For they raise false hopes, encourage those, who are bent on a policy of revising the frontier, strengthen extremist and similar views, create the illusion that changes are possible. They are deceptive. They aggravate the discrepancy between political reality and political designs. Illusions enter the political vocabulary.

The reluctance of some of the Powers to give the frontier final recognition makes many people believe that there may be some substance in the claim, and what is more, it encourages still greater ambitions of very dangerous dimensions. (It is enough to look back into not too remote history to see how the questioning of Poland's pre-war frontiers, at first very timid, had sown the seeds of aggression)[87]. Shadows of the past seek a new lease of life. The evil has not been destroyed. Is it not true that "after felling a tree it is desirable to destroy the roots lest they sprout again"? "Gigantic rallies, with thousands marching in uniform, pounding their drums, hear speaker after speaker promising them to-morrow a new German frontier stretching to the Vistula, covering much of Poland and Czechoslovakia, a giant Germany of 1914." They are addressed by political leaders, who never fail to tell them what they want to hear. Back in Bonn members of the Government turn to their Allies and argue that by refusing to recognize the Polish frontier they are following "the will of the people", that no government "who dared to do it would survive". All

Germany; see W. M. Drzewieniecki: *The German-Polish Frontier*, Chicago 1959, p. 71, n. 37.

[87] Cf. Stresemann's policy, who was said to have had no pen to recognize Germany's Eastern border. Cf. his: *Vermächtnis, Der Nachlaß in drei Bänden,* Berlin 1932–1933, vol. II, p. 172.

this is backed by printed words[88]. And some of their Allies? By their tolerant eye, by continuing in their positions-acquiesce, while in fact their not having given final recognition to the frontier is at the roots of all this. The vicious circle is closed.

The inevitable effects: continuous distrust and tension.

It cannot be otherwise. A definitive arrangement is labelled as provisional. Political hopes are raised and programmes shaped which, it is well known, can never be realized, for they cannot possibly be accepted. Thus all suggestions and attempts at reopening the issue must be rejected. This in turn is held by those making these irrational claims to justify the maintenance and continuation of that evil which is called "the cold war". Does this help? Or does it rather aggravate the situation, darken the political horizon, and make the return of stability impossible? In this way the reluctance to give final legal recognition to Poland's western border, without affecting its definitive character does serious damage to peace in Europe.

[88] A series of richly subsidized institutes concentrate their work on this and similar problems; dozens of books and pamphlets are printed. Cf. also official publications like: *Germany Reports*, published in English, 1961, or *Peace Through the Soviets*, published by the Studiengesellschaft für Staatspolitische Öffentlichkeitsarbeit, Frankfurt 1961, distributed by the Embassy of the Federal Republic in Washington; it reaches the strange conclusion that by approving the Oder–Neisse frontier one could provoke a new war. It was rightly asked: Who would be the aggressor? (see "Cahiers Pologne–Allemagne", Paris 1962, No. 3, p. 103). Cf. also David L. Hoggan's: *Der erzwungene Krieg*, Tübingen 1962, which is outstanding by its falsification of history, or R. de Geouffre de la Pradelle: *Le problème de la Silésie et le droit*, Paris 1958, a strangely biased apology of German territorial claims.

All this is said more in sorrow than in anger. For it effects the future of Europe and peaceful relations among her nations. To build them on sound foundations, fictitious situations must be done away with, and such claims abandoned as soon as possible; solutions adopted which result from agreed decisions, confirmed by further historical developments, thus firmly rooted in the dimensions of time and space. Poland's western border is a striking illustration of one of them.

As for the attitude so far adopted by the political leaders and some political parties in the Federal Republic in the light of the experiences of the past, particularly of World War II, no one will be surprised that it is looked upon by Poland with deep distrust. Emotion might have dictated refusal of reconciliation. Poland, however, has followed the path of reason, which calls for the necessity of establishing good and friendly relations with the whole of the German nation. But it also requires her to beware lest she fail to learn the lessons of her history. The attitude towards the frontier is a test case. Illusions in politics have never paid, and dangerous illusions end in disaster. In this case much more than relations with Poland are at stake.

The objective of revising this frontier is obviously irreconcilable with European peace and stability. The choice therefore is not between attaining or not attaining it—it is rather between realizing its futility sooner rather then later.

These reflections lead to the conclusion that political considerations also militate in favour of what has been submitted as legally established. We may therefore turn again to the legal aspect of the issue.

Since Poland's rights to the Oder–Neisse frontier are undeniable, this frontier ought to be finally and irrevocably recognized in law by those who have not done so (many of them have done it in fact). In particular:

(1) by the two signatories of the Potsdam Agreement, since they were parties to the negotiations which led to the establishment of the frontier, and then agreed to it. They availed themselves of the many provisions of this instrument and benefited from the rights provided by it. They were parties to the implementation of the decisions concerning the frontier, have taken note of Poland's exercise of sovereign rights over the area and acted accordingly when entering into treaty and other relations[89].

(2) by all member States of the Allied Coalition, since they have recognized the Potsdam Agreement and other instruments deriving from it, and have availed themselves of rights granted to them in the process of winding up the heritage of the war. Of the Western Powers only France has done it[90].

(3) by the former enemy states, for they accepted

[89] For instance: Commissions given and Exequatur granted to Consuls of foreign powers. Cf. K. Libera: *The International Recognition of Poland's Sovereignty Over Her Western Territories* (in Polish), "Państwo i Prawo" (State and Law) No. 1, January 1963, p. 14, *et seq.*

[90] France has done so: Lettre relative au problème des frontières de l'Allemagne 7, 8, 1945; declaration of the French Minister of Foreign Affairs, made to the Council of Foreign Ministers on July 10, 1946; statement by President de Gaulle, March 25, 1959.

this obligation in the peace treaties concluded with them[91].

All of them are legally bound to discharge this obligation towards Poland, as the state most concerned. But Poland's claim rests also on the fact of having been consulted prior to the decision, of having received diplomatic (formal and informal) assurances to this effect, particularly from the three signatories of the Potsdam Agreement, and on her participation in the process having been confirmed in the instrument itself. Last but not least, she took an active part, as she obviously had to, in the implementation of those decisions and took advantage of the rights granted to her, at the same time carrying out a series of obligations resulting from them.

The recognition of this frontier is an obligation which is to be discharged by the two German States.

The German Democratic Republic has already done

[91] Cf. art. 18 of the Peace Treaty with Italy (of 1947): "Italy undertakes to recognize the full force of the Treaties of Peace with Roumania, Bulgaria, Hungary and Finland and other agreements or arrangements which have been or will be reached by the Allied and Associated Powers in respect of Austria, Germany and Japan for the restoration of peace."

Austria represents a special case. Art. 11 of the State Treaty for the Re-establishment of an Independent and Democratic Austria (May 15, 1955): "Austria undertakes to recognize the full force of the Treaties of Peace with Italy, Roumania, Bulgaria, Hungary and Finland and other agreements or arrangements which have been or will be reached by the Allied and Associated Powers in respect of Germany and Japan for the restoration of peace."

Art. 8 of the Treaty of Peace with Japan (San Francisco, September 8, 1951): "(a) Japan will recognize the full force of all treaties now or hereafter concluded by the Allied Powers for terminating the state of war initiated on September 1, 1939, as well as any other arrangements by the Allied Powers for or in connection with the restoration of peace."

so and none of the claims advanced by the Government of the Federal Republic offers a valid excuse for not following suit. This obligation results from the Act of Unconditional Surrender, the Potsdam Agreement and later inter-allied decisions, taken in the interest of the nations most concerned, of peace, security and international legal order. It is an obligation to be discharged.

CONCLUSIONS

Frontier-making is a difficult task. No one can deny it, "since there exists no general, all-embracing formula which could apply equally to all situations[92].

Louis XIV supported some of his territorial claims with the inheritance right of his wife; John Adams argued that: "We shall never be on a solid footing till Britain cedes to us what nature designs we should have".

Papal bulls, discovery, occupation, contiguity, prescription, *uti possidetis*, accession and treaties of many types, (among them peace treaties) and similar international instruments—these are some of the legal bases advanced to justify claims to frontiers.

Difficulties have often arisen as a result of conflicting titles. Many frontier disputes are recorded in history. No continent has been free of them though some seem to have had an abundance of them. Sometimes frontier-making took scores of years[93].

The case of Poland's western frontier is one of a

[92] Cf. Lord Curzon: "It would be futile to assert that an exact science of frontiers has been or is ever likely to be evolved..." *Frontiers, The Romanes Lecture, 1907*, Oxford 1908, p. 53.

[93] It suffices to quote the Turco-Persian boundary case: The treaty of Erzerum set up a commission which began the delimitation in 1848 and continued its work with interruptions to 1914. But though the work of the Commission seemed to have been completed, this was not the end of it, for the Kurds removed almost all frontier posts. See C.H.D. Ryder: *The Demarcations of the Turco–Persian Boundary in 1913–1914*, "The Geographical Journal", London, September 1925, No. 3, p. 227.

specific character. Firmly established in law, it derives its force not only from international instruments binding the states directly concerned, Great Powers and other states, it derives it also from historical links between the area concerned with Poland, from the delimitation of the frontier between the two bordering states, and from the implementation by Poland of the relevant international instruments. But it derives it also from many acts of recognition direct and implied by the great majority of states, members of the international community.

It is worth referring—apart from the declaration made by General de Gaulle on March 25, 1959—to some statements made on the subject not long ago.

"...As a result of the war certain new frontiers were accepted, anyhow they came into being. They are referred as the Oder and Neisse frontier which affects Poland and other countries"—said Prime Minister Nehru in his statement made to the Upper House on August 22, 1961. He continued: "There is not the slightest chance in the world of these frontiers being changed except by victory in a major war. That is obvious. You cannot rule out all that has happened as a consequence of the last war. Therefore, one has to accept those frontiers and accept them clearly. All the eastern countries are affected by them. The State of Poland is affected if the frontiers are changed and any kind of talks of changing those frontiers or even hinting at the possibility of change, makes the situation much worse"[94].

The Joint Declaration of the President of the Republic of Indonesia, Dr. Sukarno, and A. Zawadzki the Chairman of the Council of State of the Polish People's

[94] Cf. also Prime Minister Nehru's statement made on October 13, 1961.

Republic, signed in Djakarta on October 10, 1961, contains the following passage:

"On the question of Germany both Parties hold the view that it should be solved by means of peaceful negotiations and that any successful solution of it should start with the acceptance of the fact of the existence of two German states and of their present existing frontiers including the Oder–Neisse frontier."

Many more statements and declarations confirm its recognition by governments and statesmen.

In summing up all aspects of the case ought to be taken into account: past an present. As to the past, the Nazi era and the war cannot be exorcised by a wave of the hand. Yet, one is continuously faced with attempts to erase them from our memories. What is more, efforts are made to distort history. When speaking of it we do not wish to reopen old or fresh wounds. What we have in mind—are history's lessons. There can be no escape from them. School-books in Western Germany may gloss over the subject; teachers may misrepresent facts, so may guide books pressed into the hand of foreign tourists. All this evasiveness is highly significant. Its inseparable companion is hostility towards those countries, that suffered most from Nazi aggression. It has grown into an anticommunist trauma[95]. To record these phenomena would amount to a melancholy recital of facts. There is no need to do it.

The political campaign denying Poland's rights to her Western frontier continues. Only a year ago the

[95] Cf. Prof. Erich Fromm's letter to the New York Times, October 25, 1963. He concludes it with the words: "Now is the time to make it clear that we are not willing to risk our existence and the world's for German wishes to regain the country's lost territories."

Göttinger Circle issued a document of thirty points including some concerning the Oder-Neisse frontier: the claim to the German frontiers of December 31, 1937 is maintained. Legal, ethical and political arguments are invoked[96]. It is based on a series of distortions of both law and facts[97]. Similar publications continue to appear, artificial theories are advanced to justify the unjustifiable[98]. Thus abundant evidence is offered of a refusal to face to-day as an irreversible consequence of yesterday. Is there any utility in challenging what has become part and parcel of reality?

Timid and rare in the beginning, "voices in wilderness"[99], as it were, the number of those who are coming to realize this is fortunately growing in Western Germany[100]. It is regrettable, however, that they are

[96] "Presse und Information Bulletin der Bundesrepublik," March 1st, 1963, No. 38, p. 357.

[97] Cf. an excellent analysis, rebutting point by point the claims concerning the frontier, by R. Pinto: *Les Thèses "juridiques" du Cercle de Göttingen sur la frontière polono-allemande*, "Cahiers Pologne–Allemagne," Paris, No. 4, 1963, p. 22–27.

[98] A list of those is to be found in R. Schuster: *Deutschland's staatliche Existenz im Widerstreit politischer und rechtlicher Gesichtspunkte 1945–1963*, München, 1963, particularly chapters 3–6. Cf. also Deutsche Zeitung mit Wirtschaftszeitung, December 3, 1963, which also lists six points reflecting the official position of the Federal Government.

[99] Cf. G. Barraclough: *Une voix dans le desert*, "Cahiers Pologne–Allemagne," Paris, No. 3, 1963, p. 50.

[100] Cf. the Memorandum of Tübingen, of February 24, 1961, in which 8 Protestant leaders made a plea for the recognition of the Oder-Neisse frontier; cf. also the recent study by Georg Bluhm: *Die Oder–Neisse Linie in der Deutschen Aussenpolitik*, Freiburg im Breisgau, 1963, while pleading for a sound and realistic solution, he fails to draw logical conclusions to the very end.

Also: Rüdiger Altman: *Das Deutsche Risiko*, Aussenpolitische Perspektiven, Stuttgart–Degerloch, 1962.

not strong enough and have not crossed the threshold of the official buildings in Bonn. The official line is still one which means—as a great American jurist John Basset Moore put it—dwelling in a "world of unreality and pretending that events which have happened have not in fact come to pass".

There are many problems in Europe which require immediate attention. They can be solved not by "blood and iron" but only by mutual understanding and—inspite of those who insist to the contrary—all will be its beneficiaries. This is the only way to steer European politics towards constructive solutions and a real detente.

As these words are written new possibilities have been opened for solving many of the world's thorny problems; the way is paved towards creating better conditions for a realistic and constructive dialogue in international politics, in a spirit of true coexistence. It should have brought to an end also the futile policy of those who are delaying the recognition of Poland's Western border.

For this is a frontier established in law and fact by the relevant international instruments, trough the settlement of millions of Poles who live there; through the integration by Poland of the area concerned; through the full and continuous exercise of her sovereign rights.

This is a case where law, life and the logic of history are in full harmony: facts were built on law, and in turn they strengthen the law. It is backed by the logic of history. Can any one seriously believe in a successful challenging of all three of them?

BIBLIOGRAPHY

1. DOCUMENTS AND TREATIES

Dziennik Ustaw (Polish Official Gazette) 1945, No. 51.

Foreign Relations of the United States, Diplomatic Papers, *the Conference at Malta and Yalta*, Washington, 1955.

The Memorandum of General W. Sikorski to President Roosevelt (December 1942).

Moniteur Belge, No. 235 of August 23, 1958.

Parliamentary Debates, House of Commons, Official Report, vol. 397, No. 35; vol. 406, No. 1; vol. 408, No. 31.

Poland, Germany and European Peace, Official Documents, 1944–1948, London 1949.

Presse und Information Bulletin der Bundesrepublik, March 1st, 1963, No. 38.

Report of the International Law Commission, Fourteenth Session, 1962.

Report of the International Law Commission, Fifteenth Session, 1963.

Report of the National Executive Committee of the British Labour Party 1944.

State Treaty for the Re-establishment of an Independent and Democratic Austria, Vienna, May 15, 1955.

Treaties of Peace with Italy, Roumania, Bulgaria, Hungary and Finland, Paris, February 10, 1947.

Treaty between Columbia and Ecuador, July 9, 1856.

Treaty between Ecuador and Peru, August 1, 1887.

Treaty of Peace with Japan, San Francisco, September 8, 1951.
United Nations Documents 1941–1945, Royal Institute of International Affairs, London 1946.
Zbiór Dokumentów (Documents Series), Warsaw, 1946, 1947, 1960.

2. TABLE OF CASES

Advisory Opinion of the Permanent Court of International Justice, Series B, No. 8, of December 6, 1923.
Affaire des frontières Colombo-Venezueliennes, Bern, March 24, 1922. Reports of International Arbitral Awards, United Nations, v. I.
The Cayuga Indians Claims Case, American and British Claims Arbitration, Awards 1–84, Washington D.C. 1924, Claim No. 6.
Cook v. U.S. 53, Supreme Court. 305.
Honduras v. Salvador and Guatemala, Central American Court of Justice, December 19, 1908. "American Journal of International Law", v. 3, 1909.
The Legal Status of Eastern Greenland case, Permanent Court of International Justice, Series A/B, No. 53.
S.S. Lotus Case, The Permanent Court of International Justice A/B, No. 22.
The Palmas case, Permanent Court of Arbitration, XIX.
The Tacna Arica Arbitration, March 4, 1925. Reports of International Arbitral Awards, United Nations, v. II.
U.S. v. Curtiss–Wright Export Corp. *et. al.*, 299, U.S. 304.

3. BOOKS AND ARTICLES

Achtung Falschungen, Warsaw 1959.
Altman R.: *Das Deutsche Risiko, Aussenpolitische Perspektiven*, Stuttgart–Degerloch, 1962.

Barraclough G.: *Une voix dans le désert*, "Cahiers Pologne-Allemagne", Paris, No. 3, 1963.
Bierzanek R.: *"Volksgruppenrecht" and "Heimatrecht"*, "Sprawy Międzynarodowe" ("International Affairs"), Warsaw 1960, No. 2.
Bluhm G.: *Die Oder–Neisse Linie in der Deutschen Aussenpolitik*, Freiburg im Breisgau, 1963.
Boggs W.: *International Boundaries*, New York 1940.
Bramson A.: *Some Legal Problems Connected with the Oder–Neisse Frontier*, Collection in honour of J. Makowski, Warsaw 1957 (in Polish).
Churchill W. S.: *Closing Ring*, London 1954.
Churchill W. S.: *The War Speeches*, London 1952.
Churchill W. S.: *Triumph and Tragedy*, Boston 1953.
Curzon Lord: *Frontiers, The Romanes Lecture*, 1907, Oxford 1908.
Drzewieniecki W. M.: *The German–Polish Frontier*, Chicago 1959.
Ehrlich L.: *Recht auf die Heimat*, "Cahiers Pologne–Allemagne", No. 2, 1962.
Faust Fritz: *Das Potsdamer Abkommen und seine Völkerrechtliche Bedeutung*, Frankfurt 1959.
Feis H.: *Between War and Peace, The Potsdam Conference*, Princeton 1960.
Fitzmaurice G. G.: *Do Treaties Need Ratification*?, "British Yearbook of International Law", vol. 15, 1934.
Fitzmaurice G. G.: *The Juridical Clauses of the Peace Treaties*, Recueil des Cours, Académie de Droit International, La Haye 1948.
Fromm Erich: "Letter to the New York Times", October 25, 1963.
De. Gaulle Charles: *Mémoires de guerre. Le Salut (1944–1946)*, Paris 1959.

De Geouffre de la Pradelle R.: *Le problème de la Silésie et le droit*, Paris 1958.
Goodrich and Hambro: *Charter of the United Nations, Commentary and Documents*, Second Edition, Boston, 1949.
Göttinger Arbeits Kreis: *German Eastern Territories*, Würzburg 1959.
Harvard Draft Convention on the Law of Treaties, "American Journal of International Law", No. 4, 1935, Supplement.
Hoggan David L.: *Der erzwungene Krieg*, Tübingen 1962.
Holborn L. W.: *War and Peace Aims of the United Nations, (Sept. 1, 1939, Dec. 31, 1942)*, Boston 1943.
Hull Cordell: *The Memoirs*, London 1948.
Kaufman E.: *Deutschland's Rechtslage unter der Besatzung*, Stuttgart 1948.
Klafkowski A.: *The Legal Foundations of the Oder–Neisse Frontier*, Poznań 1947 (in Polish).
Klafkowski A.: *The Potsdam Agreement*, Warsaw 1963.
Kraus H.: *Die Oder–Neisse Linie, Eine völkerrechtliche Studie*, Köln 1954.
Lachs M.: *Le développement et les fonctions des traités multilatéraux*, Recueil des Cours, Académie de Droit International, La Haye 1957.
Laun R.: *Das Recht auf die Heimat*, Hannover 1951.
Leahy W. D.: *I Was There*, London 1950.
Libera K.: *The International Recognition of Poland's Sovereignty over Her Western Territories* (in Polish), "Państwo i Prawo" (State and Law), No. 1, 1963.
Mc Mahon H.: *International boundaries*, "Journal of the Royal Society of Arts", vol. 84, November 1935.

McClure Wallace: *International Executive Agreements*, New York 1941.
Namier L. B.: *Conflicts*, London 1942.
Ogrodziński P.: *The Oder–Neisse as seen in the West*, "Polish Perspectives", No. 5, 1960.
Oppenheim–Lauterpacht: *International Law*, 8th edition, London 1955.
Pinto R.: *Problèmes Juridiques de la Frontière occidentale de la Pologne*, Extrait de Hommage d'une Génération de Juristes au Président Basdevant, Paris 1960.
Pinto R.: *Les thèses "juridiques" du cercle de Göttingen sùr la frontière polono-allemande*, "Cahiers Pologne–Allemagne", Paris, No. 4, 1963.
Rousseau Ch.: *La frontière de la France*, "Revue Générale du Droit International Public", No. 1, 1954.
Ryder C. H. D.: *The Demarcations of the Turco–Persian Boundary in 1913–1914*, "The Geographical Journal", London, No. 3, 1925.
Sasse H. G.: *Die Ostdeutsche Frage auf den Konferenzen von Teheran bis Potsdam*, "Jahrbuch für die Geschichte Mittel- und Ostdeutschland", vol. II, Tübingen 1953.
Schuster R.: *Deutschland's staatliche Existenz im Widerstreit politischer und rechtlicher Gesichtspunkte 1945–1963*, München 1963.
Sherwood R. E.: *Roosevelt and Hopkins*, New York 1948.
Stettinius E. R.: *Roosevelt and the Russians, The Yalta Conference*, New York 1949.
Streseman: *Vermächtniss, Der Nachlass in drei Bänden*, Berlin, 1932–1933.
"The Times", London, August 18, 1941; January 6, 1959.

Toppe H.: *Elisabeth Wiskeman und Deutschland's Nachbar Polen*, Münich 1958.
Truman H. S.: Broadcast to the Nation, August 9, 1945, Vital Speeches of the Day. August 15, 1945.
Wiewióra B.: *The Polish–German Frontier from the Standpoint of International Law*, Poznań–Warsaw 1959.
Wiewióra B.: *West German Territorial Claims against Poland and International Law*, "Przegląd Zachodni" (Polish Western Affairs), No. 1, 1961.
Wilder J. A.: *The Polish Regained Provinces*, London 1948.
Winiewicz J.: *The Polish–German Frontier*, London 1945.
Wiskeman Elisabeth: *Germany's Eastern Neighbours*, London 1956.
Woolsey L. H.: *The Tacna Arica Settlement*, "American Journal of International Law", No. 3, 1929.